

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INTERNAL REVENUE SERVICE
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

1. INTRODUCTION:

This Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and the United States Environmental Protection Agency (EPA) (collectively, "the Parties") sets forth the agreement of the Parties with respect to an initiative to share information about fuel production facilities and fuel program compliance to facilitate policy development, market understanding, data verification for renewable fuel credits, identification and reduction of Renewable Identification Number (RIN) fraud in support of Renewable Fuel Standard (RFS) program administration, and identification and reduction of fuel tax credit fraud in support of federal tax administration.

The EPA is a federal agency whose mission is to protect human health and the environment. Among other things, the EPA develops and implements policies and regulations to reduce air pollution and emissions from mobile sources and the fuels that power them, including advancing clean fuels and technology. In this role, the EPA collects data from regulated parties on gasoline, diesel, renewable fuels, and other transportation fuels to assess program implementation and compliance with fuels standards and regulations.

2. AUTHORITY:

This MOU is entered into between the IRS and the EPA pursuant to:

- 26 United States Code (USC) § 6426
- 26 USC § 6427
- 26 USC § 40A
- Notice 2018-21
- Internal Revenue Code (IRC) Section 6103(k)(6),
- Clean Air Act Sections 114, 208(c), and 211, 42 U.S.C. §§ 7542(c) and 7545(o), and 40 Code of Federal Regulations § 2.209(c).

This MOU is entered into pursuant to the authority vested in the Commissioner of the Internal Revenue Service by the Secretary of the Treasury to enforce and administer the Internal Revenue Laws under Treasury Order 150-10 and where the underlying conduct is subject to investigation under the IRC, or the Bank Secrecy Act, as amended under Treasury Directive 15-42.

3. PURPOSE:

The IRS investigates fraudulent claims for fuel tax credits. The review of significant cases found common fraudulent practices such as not producing the product, conducting inter-party related transactions, and creating the illusion that the fuel was being produced when it was

not. The IRS has pursued the majority of these criminal fraud cases jointly with the EPA. Prosecutions of these cases by the Department of Justice generally include substantial violations relating to both RIN credits for EPA's RFS program under the Clean Air Act and federal tax law violations.

The EPA maintains data related to renewable fuel production in the EPA Moderated Transaction System and in the company registration and reporting systems. The IRS would like to partner with the EPA to improve tax fraud analysis by using data from these EPA systems to help identify those common factual situations and the entities potentially involved in noncompliant or illegal activities. Once the analysis is completed and entities submitting fraudulent fuel tax credits are identified, the IRS will pursue civil and criminal investigations, as appropriate. IRS Criminal Investigations (IRS CI) and EPA Criminal Investigations Division may engage in joint investigations of RIN and tax credit fraud under the direction of the United States Attorney.

The IRS efforts will directly support the EPA RFS Program, and more specifically the appropriate use of RIN credits, by ensuring a level playing field among renewable fuel producers. There is a residual compliance effect that occurs when entities considering dishonest or illegal practices realize the IRS is involved in joint enforcement efforts with the EPA.

For the purposes of this agreement, Confidential Business Information (CBI) shall refer to all information, data, and records provided by the EPA under this agreement which is entitled to protection in accordance with 40 C.F.R. Part 2, Subpart B. Federal tax information (FTI) is confidential information of the subject taxpayer pursuant to IRC Section 6103(a) and may not be disclosed except in accordance with Title 26.

4. CONTACTS

Contacts for the purpose of this MOU will be the Excise Case Selection/Joint Operations Center (JOC) designee, IRS CI designee, IRS Governmental Liaison designee, the IRS Disclosure Office designee, and the EPA designee (see Exhibit A).

5. DUTIES AND RESPONSIBILITIES OF THE IRS:

- A. On a quarterly basis, the IRS will provide aggregate fuel tax and fuel credit data to the EPA which is statistically compiled so the identity of any specific taxpayer or business entity cannot be directly or indirectly determined and the data is not subject to the disclosure restrictions of IRC Section 6103. The IRS will provide historic and current aggregated data as requested, in time intervals that are practical to apply. The EPA plans to compare these aggregated totals to fuel data reported to the EPA as a high-level verification check on data accuracy. IRS data that could be useful to the EPA includes, but is not limited to:
 - a. Total gallons of diesel reported, by month, by year, or by state;
 - b. Total gallons of dyed diesel reported, by month, by year, or by state;
 - c. Total gallons reported by those who claimed the credit for biodiesel and renewable diesel, by month, by year, or by state;

- d. Total number of "S" registrants that filed Form 720, and total number of Form 720 filers that paid taxes as owners of gasoline, diesel, or kerosene in the calendar year, including percent variance of filers from prior to current calendar year; and
 - e. Volume of "S" registrants that filed Form 720 for gasoline, diesel, and kerosene in a calendar year, aggregated in blocks of five from largest to smallest.
- B. In addition, on a case by case basis and to the extent necessary for case development, the IRS will make written requests to the EPA for detailed information on specific taxpayers, to include, but not be limited to, site visit information and compliance reports. The specific written requests for information will contain only as much FTI as necessary for the EPA to adequately respond to the IRS inquiries. IRS relies on the disclosure authority of IRC Section 6103(k)(6) to obtain information necessary for tax administration purposes.
 - C. Pursuant to the requirements of 40 C.F.R § 2.209(c)(5), the IRS agrees not to disclose, outside of the IRS, those portions of the RFS data document covered by a CBI claim except as allowed in 40 C.F.R. § 2.209(c) & (d) or as required by applicable law. All data disclosed from EPA is presumed CBI until determined otherwise. Once received by the IRS, data disclosed from EPA will also be considered FTI unless determined otherwise.
 - D. The IRS will refer to EPA for disposition thereby, any Freedom of Information Act requests for which information shared by EPA pursuant to this MOU would be responsive.
 - E. The IRS will designate in writing, staff assigned to this initiative. See Exhibit A for a list of authorized staff. The IRS shall be responsible for ensuring the information in Exhibit A is current. Any changes shall be made by providing a revised exhibit within 30 days of the change.

6. DUTIES AND RESPONSIBILITIES OF THE EPA:

- A. The EPA will respond to IRS written requests with RFS data consistent with the purpose of this MOU as authorized under applicable law.
- B. The EPA will designate, in writing, those agency employees assigned to this initiative. See Exhibit A for a list of agency employees. The EPA shall be responsible for ensuring the information in Exhibit A is current. Any changes shall be made by providing a revised exhibit within 30 days of the change.

7. TRANSMITTAL PROCEDURES:

- A. Information will be securely transmitted between the IRS and the EPA by Secure Data Transfer.
- B. For requests made by the IRS for detailed information on specific taxpayers described in section 5B, the following procedures will be followed.
 - a. Requests will be sent to the EPA designee listed in Exhibit A.
 - b. Requests will be sent via e-mail encrypted in password protected attachments, with no sensitive information in the subject line or body of the email.

- c. All information exchanged will include a Document Transmittal, (Form 3210 or equivalent) or other means of verifying receipt with a count of documents by type and a brief description of the information being provided.
- d. If hard copy requests, the Document Transmittal and documents will be inserted in an envelope marked "TO BE OPENED BY ADDRESSEE ONLY" and inscribed with the name of the official designated to receive the information. The package will be hand delivered to the designated official or mailed via the United States Postal Service, Federal Express, United Parcel Service, or a federally accredited expedited mail delivery service, in a second envelope inscribed with the address of the designated official.

8. LIABILITY:

- A. Each party to this MOU shall be liable for the acts and omissions of its own employees.
- B. The IRS shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under the Federal Tort Claims Act [28 U.S.C. 1346(b)], or pursuant to other federal statutory authority. Similarly, the EPA shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under applicable state, federal, or local law.
- C. Each party is responsible for its own expenditures associated with the development and maintenance of this initiative, subject to availability of appropriations. Future interagency reimbursement for services, if any, shall be dependent on a separate arrangement and agreement by the parties.

9. THIRD PARTY RIGHTS:

This MOU does not confer any rights or benefits on any third party.

10. PRIVACY:

- A. IRS and EPA acknowledge the sensitivity of the data being transferred pursuant to this MOU, and legal restrictions on disclosure of information about individuals under the Privacy Act of 1974. The agencies agree that such data must be adequately protected from any unauthorized access, consistent with the federal privacy and information security standards governing the systems that the agencies shall use for the collection, transfer and maintenance of that data. Each agency shall ensure that access to the data is limited to authorized users with a bona fide need-to-know in the performance of their official duties. In the event that either agency is legally required or authorized to disclose the data for other purposes, that agency agrees to maintain or be able to create an appropriate accounting of such disclosures, where required by the Privacy Act of 1974. All records storage and retention will be maintained in accordance with applicable agency records schedules approved by the National Archives and Records Administration (NARA), and with the agencies' Privacy Impact Assessments for their respective systems. The agencies understand and agree that each such system must have a current and valid Authorization to Operate applicable to all systems servers and all other system resources on which such data may be processed or otherwise reside.

B. If either party discovers or is alerted to a potential security breach of any system involved in the maintenance or transfer of data described in this MOU, or if either party believes data is missing, not received, or not properly uploaded, such party shall notify the other party as soon as possible, and in any event, not later than one business day of becoming aware of such incident. The IRS and EPA also agree to work together to resolve such incident and ensure the matter is resolved fully and data is secure. Each agency agrees that it is responsible for, and that it maintains a current breach notification plan and procedures as required by Office of Management & Budget Memorandum M-17-12 (2017) or any superseding guidance, if applicable.

11.EFFECTIVE DATE:

The effective date of this MOU is the date it has been signed by all parties.

12.AMENDMENT OF MOU:

This MOU may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by all parties to the MOU.

13.TERMINATION OF MOU:

This MOU may be cancelled upon 30 days written notice by either the IRS or the EPA or immediately by signed agreement of the IRS and the EPA.

14.LIMITATIONS:

The terms of this MOU are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of this MOU which conflicts with federal law will be null and void.

15.EVALUATION OF DATA EXCHANGE:

The IRS and the EPA will review this MOU annually to evaluate the existing data exchange, examine the continuing needs for and uses of the exchanged data, and determine whether the provisions of this MOU require amendment or revision. The method of review (conference call, meeting, email) will be jointly determined by the IRS Governmental Liaison, JOC, IRS CI, and the EPA designees.

APPROVALS:

INTERNAL REVENUE SERVICE

John Tuzynski
Name

John J. Tuzynski Digitally signed by John J. Tuzynski
Date: 2019.07.30 14:54:56 -04'00'
Signature

Director, Examination Headquarters
Title



Date

APPROVALS:

INTERNAL REVENUE SERVICE

Shea C. Jones
Name

 Digitally signed by Shea C. Jones
Date: 2019.07.30 08:38:13 -04'00'
Signature

Director, Operations Policy and Support
Title



07/30/2019
Date

APPROVALS:

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Byron Bunker
Name


Signature

Compliance Division Director, Office of Transportation and Air Quality
Title

Bunker. Byron@epa.gov
Email Address

29 July 2019
Date

EXHIBIT A Designee Listing

EPA designee:

Name: Ben Larson
Title: Environmental Protection Specialist
Telephone: 202-343-9565
E-mail: Larson.Ben@epa.gov

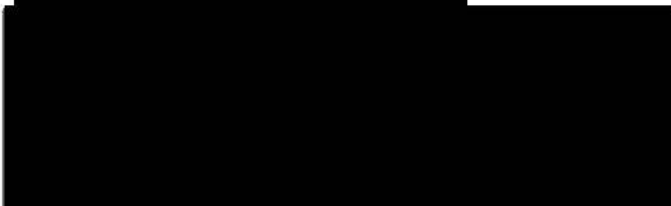
Excise Case Selection/Joint Operations Center designee:

Name: Eric J. Brown
Title: Supervisory Tax Analyst, Excise Case Selection/Joint Operations Center



Excise Policy designee:

Name: Cindy Ferwerda
Title: Senior Program Analyst



IRS Governmental Liaison designee:

Name: Brian Romberger
Title: Analyst, HQ Intergovernmental Policy Analyst



IRS Disclosure Office designee:

Name: Rob Tillman
Title: Senior Disclosure Analyst

